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Programme for Parliament

THE Queen's Speech, read by the LORD CHANCELLOR at the opening of Parliament on Tuesday, promises several measures of legal and general interest. We welcome the news that legal advice and aid is to be made more widely available ; we hope that the cryptic phraseology in the Gracious Speech implies that the income and capital resources ignored in assessing entitlement to legal aid will be at least as much as those allowed for purposes of National Assistance. The Government is going to come to grips with those knotty problems inherent in the obsolete laws on betting and gaming, and charitable trusts. On the latter, it is not revealed whether a general widening of the definition of authorised trustee investments is intended. The Truck Acts too will be scrutinised during examination of the announced proposal to permit payment of wages by cheque upon request by an employee. Social requirements have not been forgotten. Once more the earnings rules for pensioners and widowed mothers are to be further relaxed ; it would save much future time and trouble if they finally could go the way of the recently-abolished foreign currency tourist allowances. Attention is to be given to house and road building. Penal reform and after-care of prisoners will be re-examined. More effective means of dealing with young offenders are promised ; we doubt whether the birch and cane qualify for inclusion in the phrase " effective means." In the interests of increasing opportunities for employment in the areas suffering unemployment at present, the Distribution of Industry Acts will be replaced. The expected promise of an inquiry into the working of the Companies Act and an amendment of the law governing building societies has materialised. On a wider horizon, the extension of co-operation in international measures to conserve supplies of fish is announced, as well as the intention of Her Majesty's Ministers to work for " a just and reasonable settlement of the unresolved problems of the breadth of the territorial sea and of fishery limits." On the assumption that not all our readers are well up in the subject-matter of the quoted passage, and with a view to assisting those wishing for enlightenment, we publish the first part of an article thereon at p. 849, *post*.

Perpetual Privilege

ALTHOUGH counsel's endorsement on his brief of an order of court is *publici juris*, it is clear that the contents of the brief itself and notes made by counsel and instructions given to him, whether by endorsement on his brief or by notes or observations within, are privileged. Authority for this statement may be found in *Nicholl* v. *Jones* (1865), 2 H. & M. 588, but in *Hobbs* v. *Hobbs and Cousens* (1959), *The Times*, 22nd October, STEVENSON, J., was asked to decide whether

CONTENTS

a litigant should be permitted, on taxation, to inspect the brief delivered on behalf of another party. In a contested divorce suit, the co-respondent was ordered to pay the husband's costs. The co-respondent attended in person before the taxing registrar on the taxation of the costs and, in connection with the item for "instructions for brief," asked to be allowed to inspect the brief delivered to counsel for the husband. Stevenson, J., admitted that at first sight it seemed reasonable that the co-respondent should be allowed to inspect the contents of the brief for which he was required to pay, by way of party and party costs, in order to put himself in a position to contend that the brief fee was excessive. However, his lordship was quite satisfied that the co-respondent was not entitled to inspect the brief or its contents as there was abundant authority for the proposition "once privileged, always privileged." Indeed, in *Wilson* v. *Rastall* (1792), 4 Term Rep. 753, Buller, J., found that privilege was confined to counsel and solicitors "but in order to raise the privilege, it must be proved that the information, which the adverse party wishes to learn, was communicated . . . in one of these characters . . . In such a case it is not sufficient [for the adverse party] to say that the cause is at an end; the mouth of such a person is shut for ever." And so, it seems, is his brief.

Performing Right Tribunal

THE *Board of Trade Journal* of 16th October reports a decision of the Performing Right Tribunal concerning an application made by Southern Television, Ltd. This company is a programme contractor, and as such was concerned to obtain a licence for musical works in the repertoire of the Performing Right Society to be broadcast by the Independent Television Authority. Its case was not covered by a licence scheme. The Performing Right Society was prepared to grant such a licence, but only on the condition that a clause should be inserted in effect prohibiting the reproduction on records or cinematograph films either by the programme contractor or by the Independent Television Authority without terms having first been agreed with the owner of the recording right. It was the contention of Southern Television, Ltd., that that clause imposed terms or conditions which were unreasonable; and it applied accordingly to the tribunal to have it so determined. The case for Southern Television, Ltd., was supported by the B.B.C., and that for the Performing Right Society by three bodies (which combined to form one interested party), all being owners of copyright in the making of mechanical recordings. The Performing Right Society maintained that if and so far as a licence to broadcast carried with it any right to make a mechanical reproduction, this would constitute an infringement of the last-mentioned copyright, and frankly admitted that the clause which the application sought to impeach was deliberately designed to defeat whatever statutory provisions might have that effect. The tribunal did not find it necessary to determine the question of law as to whether or not there were statutory provisions which did have that effect. If there were no such provisions, then the insertion of the proposed clause was pointless. If, on the other hand, the Legislature had thought fit so to provide, then it was unreasonable to compel Southern Television, Ltd., against its will to contract out of any statutory rights which it might have. In either event, therefore, it was held to be unreasonable to include the proposed clause as a term or condition subject to which the Performing Right Society would grant the required licence to Southern Television, Ltd. The tribunal accordingly ordered that Southern Television, Ltd., was entitled to be granted a licence in the form proffered by the Performing Right Society, but without the inclusion in its terms of the proposed clause or any clause to the same or a like effect. The Performing Right Society was ordered to pay the costs of Southern Television, Ltd.

Weeds and Weed-killers

THE Weeds Act, 1959, consolidated earlier enactments relating to injurious weeds. Section 1 of the Act provides that, where the Minister of Agriculture, Fisheries and Food is satisfied that there are certain weeds growing upon any land, he may serve upon the occupier of the land a notice in writing requiring him, within the time specified in the notice, to take such action as may be necessary to prevent the weeds from spreading. If the occupier "unreasonably fails to comply with the requirements of the notice," he is guilty of an offence and, on summary conviction, is liable to a fine not exceeding £75 or, in the case of a second or subsequent offence, £150 (s. 2). Further, if the occupier of any land does not take the action required by the notice within the time specified therein, the Minister (s. 3), or the council of any county or borough if so authorised by the Minister (s. 5), may take that action and recover a sum equal to the reasonable cost of so doing from the occupier. A recent inquest at Bromyard has served to emphasise the dangers inherent in the use of certain chemical weed-killers. The wife of a farm labourer died after drinking water contaminated by a potato spray mixture and the jury asked that a rider "that these arsenical sprays should be prohibited altogether" should be added to their verdict of death by misadventure. Many people will have been glad to read the letter from Mr. M. N. GLADSTONE, the chairman of the British Weed Council, in *The Times*, 9th October, in which he said that the Council had agreed to recommend to the manufacturers of sodium and potassium arsenite that they should cease to supply these products for use as haulm destroyers and for the destruction of agricultural weeds, and to the Ministry of Agriculture that they should withdraw approval for them under the Crop Protection Products Approval Scheme.

Recorder of London

THE retirement of Sir GERALD DODSON as Recorder of London on 16th November has been announced. Now aged seventy-five, Sir Gerald has been Recorder for twenty-two years, a longer term than any held by his predecessors. Half a century has passed since he was called to the Bar; in 1925 he was appointed a Treasury Counsel at the Central Criminal Court, becoming a junior judge there in 1934 and Recorder in 1937. Sir Gerald is to be succeeded by Sir ANTHONY HAWKE, Common Serjeant at the Old Bailey since 1954. Born in 1895, Sir Anthony joined the Western Circuit after being called to the Bar in 1920. Since 1932 he has been one of Prosecuting Counsel at the Central Criminal Court, being Senior Prosecuting Counsel there from 1945 to 1950. He was appointed Recorder of Bath in 1939 and Deputy Chairman, County of Hertford Quarter Sessions, the following year, serving in both capacities until 1950, when he became Chairman of London Quarter Sessions, which post he vacated in 1954.

THE RIGHTS OF LIGHT ACT, 1959

THIS short but important statute was passed on 16th July, 1959, but it did not come into force until three months later (s. 8 (2)); in the interval, rules have been made under s. 3, providing for proceedings before the Lands Tribunal (see Lands Tribunal (Amendment) Rules 1959 (S.I. 1959 No. 1732)), and also under s. 5, providing for registration in local land charges registers (see Registers of Local Land Charges (Rights of Light, etc.) Rules, 1959 (S.I. 1959 No. 1733)).

The parent of the Act was the Report of the Committee appointed by the Lord Chancellor (Cmnd. 473, July, 1958) to advise whether it was considered desirable :—

> "(1) to amend the law relating to rights of light in relation to war-damaged sites or sites whose development was prevented or impeded by reason of restrictions or controls imposed during or after the late war; and
>
> (2) to preserve rights of light acquired or in process of acquisition by buildings which subsequently suffered war damage."

These terms of reference were extended, in view of the effect which planning legislation has had on this subject, to include the question :

> "whether any alterations are desirable in the law and practice relating to the means whereby the acquisition of rights of light over any land may be prevented."

The Committee were convinced that there was "a real practical problem calling for a remedy" (Report, para. 6), and also that the customary remedy of preventing a negative easement of light being acquired across the prospective servient tenement by erecting a screen was "a crude one and its results are unsightly" (*ibid.*, para. 13); moreover, planning permission would normally be required for the erection of such a screen, and this may not always be forthcoming. The committee therefore came to the conclusion that a scheme should be devised whereby a statutory notice might be given having the like legal effect as the actual erection of a screen; the giving of such a notice should—said the Committee—be treated as an interruption of the access of light both for the purposes of the Prescription Act, 1832, and at common law. Further, in computing the period of prescription under s. 3 of the 1832 Act, the Committee were agreed that some allowance ought to be made in favour of the prospective servient owner, for the period during which there were serious restrictions on building operations as a consequence of the war. The committee then made detailed recommendations as to how these conclusions of principle should be implemented; these recommendations were accepted and are now the substantive provisions of the 1959 Act.

Prescription period extended

Section 1 of the Act therefore starts off by prolonging the prescription period for the purpose of the acquisition of an easement of light, from twenty to twenty-seven years, so far *only* as concerns proceedings in any action commenced after 16th July, 1959, and before 1st January, 1963, or in any action commenced on or after 14th July, 1958, but before 16th July, 1959, and not by then finally disposed of. Further, in so far as, in any *subsequent* proceedings, it is necessary to determine whether a person is entitled to an absolute and indefeasible right to the access and use of light to and for a building, and anything done or begun before 1st January, 1963, constitutes, or if continued or completed would constitute an infringement of that right, the prescriptive period is again to be extended to twenty-seven years. This "period of grace" of seven years should be long enough to overcome any special hardships caused by the period during which building restrictions were in force, bearing in mind that the commencement of the war is now as far away as twenty years.

Permanent change in the law

The rest of the Act is concerned with the more permanent—and perhaps more radical—change in the law recommended by the committee, whereby a prospective servient owner may register a notice in lieu of erecting a screen so as to prevent a would-be dominant owner from acquiring an easement of light over the servient land. When a notice in the prescribed form is duly registered, then (says s 3) for the purpose of determining whether any person is entitled (by statute or at common law) to a right to the access of light to the dominant building across the servient land, the access of light to that building across that land shall be treated as being obstructed to the same extent and with the like consequences, as if an opaque structure of the dimensions specified in the application had been erected in the specified position on the servient land on the date of registration by the person who made the application, and had remained there for the time during which the registration was effective.

Registration has to be effected in the local county or non-county borough, urban district or rural district, land charges register; no doubt the local registers were chosen in preference to the London Charges Register as notices in the local registers are registered against parcels of land, and not against the names of estate owners as at Kidbrooke. Before registration can be effected, however, an application has to be made to the Lands Tribunal for a certificate to the effect that adequate notice of the proposed application for registration has been given to all persons who may be affected; as an alternative an application may be made for a certicate that in the opinion of the Lands Tribunal, the case is one of exceptional urgency—in this case the consequent registration will be temporary only.

Lands Tribunal certificate

An application for a certificate from the Lands Tribunal must be in Form 9 in the First Schedule to the Lands Tribunal Rules, 1956 (added by the Lands Tribunal (Amendment) Rules), and it must give particulars of persons likely to be affected, and enclose two copies of the proposed application for registration; the application for registration must follow Form I scheduled to the Registers of Local Land Charges (Rights of Light, etc.) Rules made under s. 5 of the Act. The application to the Tribunal must also be accompanied by a fee of £10, or £15 if a temporary certificate is required as well as a definitive certificate.

On receipt of the application for a certificate, the president of the Lands Tribunal will decide what notices must be given, whether by way of advertisement or otherwise, to persons appearing to have an interest in the dominant building, and the applicant may be required to furnish particulars; then, when the notices required have been given, the registrar of the tribunal must be notified in writing (no special form) by the applicant, and the tribunal, if satisfied that the notices have been given, will issue a certificate in Form 11 scheduled to the Rules. It will be noted that there is to be nothing in the nature of a *hearing* before the Lands Tribunal; if the

owners of the dominant building question the right of the servient owner to register a notice or erect a (notional) screen, they will have to raise the matter with him and if they consider fit, commence proceedings in the ordinary way to enforce any easement of light they may claim to exist. In a case of "extreme urgency," the Lands Tribunal will issue a temporary certificate (Form 10), which will be effective for a period not exceeding six months, without waiting for any notices to be served; then when the tribunal are satisfied as to the service of notices the temporary certificate will be replaced by a definitive certificate (Form 12).

A Lands Tribunal certificate in itself is of no effect whatever; it is the notice on the local land charges register that has the effect described in s. 3 of the Act (see above). When a temporary or definitive certificate has been obtained, therefore, an application for registration of a "light obstruction notice" can then be made to the local authority, accompanied with a fee of £10. The application form, as mentioned, must comply with the rules (and it will be observed that a plan will always be required), but if accompanied by a certificate of the Lands Tribunal complying with the Rules, registration will be automatic—the registrar has no power to refuse to accept an application which is in order.

If the certificate is a temporary one, the notice will remain on the register only for the duration of the certificate but if a definitive certificate is subsequently obtained, a fresh application for registration will not be necessary as the certificate will have to be filed with the registrar and a further fee of 2s. 6d. paid. Subject to the foregoing, a light obstruction notice will remain on the local land charges register until cancelled, or until the expiration of twenty-one years from the date of registration (Local Land Charges Rules, r. 6 (3)).

Duration of effect of registration of notice

None the less, the effect of the registration of the notice—the notional erection of an opaque screen—is to last until the registration is cancelled, or on the expiration of one year from the date of registration of the notice (s. 3 (2) of the Act). A year is quite clearly a long enough period to constitute an interruption sufficient to prevent the prescription period from running in favour of the dominant building. If, on the expiration of eighteen years or so from the end of the first year, the relative circumstances of the dominant building and the servient tenement are the same, it will be a matter for the owner of the latter to consider applying afresh for the registration of a new notice, as in practice under the old law after the effluxion of so long a time he would probably have had to consider at least patching up his physical screen! On the other hand, the notice must clearly remain on the register for a period of twenty-one years (the effective year *plus* the twenty-year prescription period), so that subsequent would-be purchasers and others interested can ascertain the position.

Power of court

When proceedings are brought consequent on the registration of a light obstruction notice—normally, of course, by the owner or occupier of the dominant building—to question the right of the owner of the servient tenement to register such a notice, the court has power to grant a declaration, and an order directing the registration of the notice to be cancelled or varied as the court may determine (s. 3 (5) of the Act). An office copy of any order directing a variation or cancellation must be obtained and filed with the local land charges registrar (fee of 10s.), and the registrar must then make the necessary alteration or cancellation in the register. In addition, the person on whose application the light obstruction notice was registered, or his successor in title to the servient land, may within a year of the date of registration apply in Form 2 (scheduled to the Local Land Charges Rules; fee of 10s.) for cancellation of the registration, or for variation of the particulars of the position or dimensions of the notional screen—but only so as to *reduce* its height or length, or *increase* its distance from the dominant building. It will be noticed that the local land charges registrar will not be concerned with any applications or representations from the owner or owners of any dominant building or any other person who may consider himself aggrieved by the notional erection of the opaque screen; all such complainants are left to their ordinary common-law and equitable remedies (supplemented by s. 3 (3), (4) and (5)) from the courts in the ordinary way.

In practice it will be found that this is neither a simple nor an inexpensive procedure. A servient owner will certainly be best advised to consult his solicitor, and the fees (a minimum of £20) are not negligible; a substantial fee in respect of the local land charges register has been fixed, it has been said by the Ministry of Housing and Local Government (Memorandum 233/LC, dated 19th October, 1959), "both because of the special work which will be entailed for registrars and because with these entries a failure to register, a defective registration or a failure to disclose an entry on an official search may in each case lead to a substantial claim for damages." (It is not clear why the Ministry have chosen to make a special point of this. Claims against registrars for errors are in practice extremely rare.) On the other hand, the expense of erecting and maintaining an effective screen (for which planning permission would probably have had to be obtained) was never trifling. It is obvious that the Act should be welcomed, and the procedure is not really over-elaborate.

Search problem

One problem may arise in the future. A light obstruction notice is registered against the specified dominant building, and the existence of a notice will be revealed on a search in Pt. XI (a new Part created by the 1959 Rules), or in all Parts (the ordinary case—there will be no need to amend the usual form of requisition for an official search), against that building. An intending purchaser of the servient tenement may also, however, be most concerned to know whether any light obstruction notice has been registered in favour of that servient tenement. Such a notice will not be revealed at all on a search against the servient tenement only, and therefore such a purchaser may be obliged to search also against the dominant building: this may be difficult if he is not sure as to the exact location or description thereof. Consideration should therefore be given, it is suggested, in any case where the existence of such a notice would be important to the particular servient tenement, to inquire precisely of the vendor as to the position before contract; the information so obtained should then be checked by a search in the local land charges register against the dominant building.

J. F. GARNER.

NEW COMMISSIONER OF ASSIZE

Mr. FENTON ATKINSON, Q.C., has been appointed a Commissioner of Assize on the Wales and Chester Circuit.

LEGAL AID AND TAXATION

BEFORE 1956 any solicitor who was aggrieved by a taxation under the Legal Aid and Advice Act, 1949, applied for a review of taxation to a judge, and the judge heard the review as a matter of course. In *Hammond* v. *Hammond* [1957] P. 349, Karminski, J., held that the courts had no jurisdiction to hear such reviews. On 9th October, 1959, McNair, J., in *Sutton* v. *Sears* (p. 855, *post*) decided that he had the necessary jurisdiction to hear such a review.

It is suggested that McNair, J., is right and that solicitors who are aggrieved at the taxation in a legally-assisted case can, as of right, apply to a judge for a review of the taxation. Further, there must be cases in which a solicitor who was aggrieved by the taxation, but because of *Hammond* v. *Hammond* took no steps to have it reviewed, may now be able to apply to a judge for such a review.

Growing case against jurisdiction

Although before 1956 judges were reviewing legal aid taxations as a matter of course, by 1954 certain doubts were beginning to trouble some judges. In *Self* v. *Self* [1954] P. 480, Sachs, J., ended a judgment in which he had reviewed taxation with these words (at p. 485): "There does not at present appear to exist a method by which appeals of this importance [i.e., reviewing taxation] can readily be brought before the court in circumstances which enable those presenting them to be paid out of the Legal Aid Fund. That fact and the absence of a system under which the Legal Aid Fund itself can be satisfactorily represented are matters which may be worthy of attention."

In 1955, Harman, J., in *Theocharides* v. *Joannou* [1955] 1 W.L.R. 296, said: "The difficulty in these cases is that the applicant whose solicitor's costs are being taxed has, in effect, no interest in the matter. If he has a nil contribution, he cannot have any interest, and with a contribution of the sort which is usually found in legal aid cases, he practically never will have an interest. The application, therefore, is made for the benefit of the solicitor and possibly for the benefit of counsel who have been concerned in the case."

By 1956 Sachs, J.'s concern had channelled itself into two distinct lines of thought. First, although the interests of the Legal Aid Fund could be affected by a review of taxation, there was no machinery for the "fund" to be represented at the hearing of the review. Secondly, "There is a further point which has before now been discussed in chambers in other cases. These applications for review can, at present, only be brought in the name of and by authority of the lay client. Not only has that client no beneficial interest in the result, but the mere fact that such an application is made often may (as in *Isaac* v. *Isaac* [1955] P. 333, and, I think, in the present one) adversely affect the lay client irrespective of success or failure: for technically the costs of the objection and the application under R.S.C., Ord. 65, r. 27 (41), are chargeable against his contribution—and in a marginal case (as the present) may reduce the amount paid back to the lay client by the Legal Aid Fund": see *Eaves* v. *Eaves* [1956] P. 154, at p. 159.

Here was an alarming thought: was there a conflict of interest between solicitor and legally assisted person in the matter of the review of taxation, so that, when an aggrieved solicitor applied for such a review, the court had to take cognisance of the conflict and refuse to entertain the application for review at all?

In *Rolph* v. *Marston Valley Brick Co., Ltd.* [1956] 2 Q.B. 18, at p. 27, Devlin, J., clearly expressed that view of the law in these terms: the application for review of taxation, he said, "is brought by the solicitor in the name of the assisted person. But the solicitor cannot possibly have authority from the assisted person to bring this summons. He could not be heard to say that she was his client, for, if she was, he would be acting in breach of duty towards her by seeking to obtain money from her estate partly for his own benefit. When the court becomes aware that a solicitor is acting without authority, I think that the court should act of its own motion and refuse to grant relief: see *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co.* (*Great Britain*), *Ltd.* [1916] 2 A.C. 307, *per* Lord Parker of Waddington . . . The fact is that the notion that the solicitor is still acting for his nominal client is a fiction that is maintained so that the legal aid scheme may still be made applicable. But the court has always set its face against fictions of this sort: see *Adams* v. *Naylor* [1946] A.C. 543."

It is interesting to observe that in *Rolph's* case, in spite of this expression of opinion, the judge reviewed the taxation, and, indeed, no judge had yet refused to review a taxation under the 1949 Act. Clearly what Devlin, J., said was *obiter* and the force of it was weakened by the fact that, as the judge himself said, he had heard no argument on that aspect of the case.

In *Hammond* v. *Hammond*, *supra*, the judge did hear argument on that aspect of the case, and having heard it decided that the court had no jurisdiction to entertain an application for review of taxation in a legal aid case.

Criticisms of case against jurisdiction

There were those who were not satisfied with the decision in *Hammond* v. *Hammond*. At its less thought-out level it did not seem "right" that a solicitor should not have the benefit of a review of taxation. Such a review could only deal with matters of law (*Coon* v. *Diamond Tread & Co.* (1938), *Ltd.* [1950] 2 All E.R. 385); if the taxing master had erred on a matter of law, it seemed inequitable that a judge should have no jurisdiction to put the matter right.

Then, too, it seemed wrong that a solicitor should not be entitled to a review of taxation, because the conflict between himself and his assisted client, if it existed, already existed at the time of the original taxation. If *Hammond* v. *Hammond* was right, was not the consequence that a solicitor was not entitled to have a taxation under the 1949 Act, because the taxation was made on behalf of a client whose interest was, it could be said, best served if no taxation at all took place. Then indeed would his contribution to the "fund" be safe!

Here was troublesome matter, and it was only a conviction that common sense and the merits were against *Hammond's* decision that spurred counsel in *Sutton* v. *Sears* to review the matter again. It was soon clear that, in order to attack *Hammond*, one had to attack the *dicta* in *Rolph*, and in particular those above quoted. If a fallacy existed, it was there.

At first the fact that there was interposed between assisted person and solicitor the "fund" was fastened on. The solicitor had no right to be paid by the assisted person but must look to the "fund": see s. 2 (2) (*b*). The legal nexus between the assisted person and the "fund" was of quite a different nature to the legal nexus between the "fund" and

the solicitor. Could it be said that between the assisted person and the "fund" there stood a barrier, and what happened on either side of that barrier was of no concern to the parties concerned? Much research was done into this aspect of the case, but the more one sought to sustain this argument, the more the true answer to the problem became apparent, and that answer, though it could be arrived at in three different ways, was basically a simple one.

According to this argument it was wrong to look at the matter as one of conflicts of interest, actual or potential. The true view could be put this way: the assisted person accepts legal aid upon terms; one such term is that his solicitor and counsel will be remunerated in the manner prescribed by the Act; another such term is that in order to enjoy the generous benefits of the Act he may be liable to make contributions to the costs incurred in his action, costs to be determined according to the provisions of the Act.

Those are the terms upon which legal assistance is given and accepted. The means whereby these terms are implemented are mere machinery. Thus the court, under the Act, must order taxation (see the Legal Aid (General) Regulations, 1950, reg. 18 (3) as amended by S.I. 1954 No. 166, reg. 27; *Brown* v. *Brown* [1952] 1 All E.R. 1018 (C.A.), and *Page* v. *Page* [1953] Ch. 320). The taxation it orders must, however, be in accordance with the provisions of the Act's Sched. III, para. 4 (1), which provides, *inter alia*, "that costs shall be taxed for the purposes of this Schedule according to the ordinary rules applicable on a taxation as between solicitor and client." But Ord. 65, r. 27, provides "the following . . . general regulations *shall* apply to *all* proceedings and *all taxations* in the Supreme Court of Judicature." The regulations concerning a right to review are part of the regulations contained in r. 27, and thus are to apply to "all taxations," *a fortiori* to those under "the ordinary rules of taxation." It follows that the 1949 Act provides, and one of the terms under which the assisted person accepts the generous benefits of the Act is, that the solicitor shall have a right to a taxation which entitles him to a review of taxation. Is there anything in the Act to deprive the solicitor of that right to a review? Quite the contrary: the right is preserved by s. 1 (7) (*a*), which provides, "Save as expressly provided by this Part of this Act or by regulations made thereunder,—

> (*a*) the fact that the services of counsel or a solicitor are given by way of legal aid shall not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of such relationship."

Sutton v. *Sears*

McNair, J., heard as many as six submissions against the decision in *Hammond* and in favour of the court's right to review taxation in a legal aid case. On behalf of The Law Society, the court was given much assistance about the practice on taxations. Those who read the judgment will observe that the judge accepted that one could arrive at the same route, jurisdiction, by three different ways, of which the above is one. It must be inferred that he rejected three submissions, and as these were complicated and technical it is unnecessary to set them out here.

Two practical points appear to follow that decision: (i) *Hammond* v. *Hammond* is not overruled; it was not followed. Solicitors may now proceed to apply for a review of taxation and rely on *Sutton* v. *Sears*, which judges will in all probability prefer to *Hammond* v. *Hammond*; (ii) many solicitors forebore to apply for a review of taxation because of *Hammond* v. *Hammond*. They can now apply for a review out of time (see Ord. 65, r. 27, reg. 41) on the grounds that they refrained from applying before, because of *Hammond* v. *Hammond*. One such application has already been successfully made.

JACK H. HAMES.

Law Reform Series

TRESPASS TO THE PERSON

ONE of the most controversial aspects of the law is whether an action should lie in trespass to the person when the act causing injury is neither negligent nor intentional. If the trespass is intentional then the appropriate remedy would be either assault or battery. As Winfield says: "It is quite true that trespasses to the person which have acquired special names (assault, battery, etc.) are nowadays associated almost exclusively with direct and intentional force on the part of the offender, but until comparatively modern times it was not in the least necessary that the injury should have been intentional; the liability was just the same even if the injury was inadvertent . . ." (Winfield on Tort, 6th ed., p. 247).

Defence of inevitable accident

To-day, however, it would seem that the proof of an inevitable accident is a good defence to trespass to the person. Denman, J., in the well-known case of *Stanley* v. *Powell* [1891] 1 Q.B. 86, conducted a thorough examination into the early authorities in this field. The facts of the case were that the defendant was a member of a shooting party and in the course of shooting at a pheasant a pellet from his gun glanced from the bough of a tree and injured the plaintiff, who was engaged as a carrier of game for the party. It was alleged in the statement of claim that the defendant had "negligently and wrongfully and unskilfully fired his gun." The jury found that the defendant had not in any way been guilty of negligence.

Many old authorities were considered, but Denman, J., accepted an explanation of these old cases given by Bramwell, B., in *Holmes* v. *Mather* (1875), L.R. 10 Ex. 261. Bramwell, B., said (at p. 268): "As to the cases cited, most of them are really decisions on the forms of action, whether trespass or case. The result of them is this and it is intelligible enough: if the act that does an injury is an act of direct force *vi et armis*, trespass is the proper remedy (if there is a remedy) where the act is wrongful either as being wilful or as being the result of negligence. Where the act is not wrongful for either of these reasons, no action is maintainable, though trespass would be the proper form of action if it were wrongful."

Denman, J., therefore found for the defendant, thus holding that inevitable accident is a good defence to trespass to the person.

Although the case of *Stanley* v. *Powell* has been very much criticised, it has been strongly approved in *National Coal Board* v. *Evans* [1951] 2 All E.R. 310, by the Court of Appeal. It was argued in that case that Denman, J., incorrectly decided *Stanley* v. *Powell* as he based his decision on the *dictum*, already cited above, from *Holmes* v. *Mather*, and that the *dictum* only applied to cases of trespass on the highway. The Court of Appeal would not accept this argument and Cohen, L.J., said (at p. 315): "Neither *Holmes* v. *Mather* nor *Stanley* v. *Powell* is binding on this court, but, if I may say so with respect, I see no reason to differ from the conclusions arrived at in those cases. I would add that *Stanley* v. *Powell* was not a case of an accident on the highway. It was a case where the defendant had fired at a pheasant and injured the plaintiff, who was engaged as a carrier of game for the party. It would be strange that Denman, J., should have cited the authority of Bramwell, B., in *Holmes* v. *Mather* if he had thought that those observations were confined to the case of accidents on the highway."

Summary of the law

An excellent and concise summary of the law on this point is to be found in the judgment of Diplock, J., in the recent case of *Fowler* v. *Lanning* [1959] 2 W.L.R. 241; p. 157, *ante*. This case was concerned with a preliminary point raised on the pleadings. The question to be determined was whether the pleadings were adequate when they merely stated that the defendant shot the plaintiff. Diplock, J., held that they were certainly not adequate and summarised the law as follows:—

(i) If the injury to the plaintiff is the direct consequence of the defendant's act which was neither intentional nor negligent, trespass to the person does not lie.

(ii) Trespass to the person on the highway does not differ from trespass to the person in any other place in this respect.

(iii) The plaintiff must be considered as taking on himself the risk of inevitable injury from the acts of his neighbour which, in the absence of damage to the plaintiff, would not in themselves be unlawful.

(iv) The onus of proving negligence lies on the plaintiff, whether the action be framed in trespass or in negligence.

These rules have been subject to the most severe criticism, one of the bitterest attacks being made by Mr. Landon, the learned editor of Pollock on Torts. Mr. Landon argues that the decision in *Stanley* v. *Powell* was quite wrong, historically. He maintains that in these circumstances an action in trespass will lie on the mere proof of the injury. He strongly disputes the authority of Bramwell, B.'s *dictum* in *Holmes* v. *Mather* as it seems that it was differently reported in the *Times Law Reports*. Mr. Landon says: "The decision in *Stanley* v. *Powell* makes it impossible to expound the common law as a steady development from precedent to precedent. It has hewn a chasm across the roadway, it has effected a leap in the dark which cannot be paralleled from any other page of Holdsworth History" (Pollock on Torts, 14th ed., p. 144). Whether this is so; whether in fact the notorious *dictum* was incorrectly reported, the fact remains that the Court of Appeal has accepted Denman, J.'s decision. Historically, the argument is important, but from the point of view of the litigant, irrelevant. The Court of Appeal may have perpetuated a startling historical error, but this is not altogether unwise if the sensible and just decision has been reached. The question which must be answered, therefore, is whether the decision is in fact *just* in the broadest sense of the word.

If *A* accidentally injures *B*, then *B* has no remedy. Can it be said that it is just to allow *B* no remedy when he may have been most severely injured? On the other hand, if *A* is called upon to compensate *B*, is this just when no trace of any wrong can be found in *A*? To hold a man responsible for an accident would seem, *prima facie*, unjust. But what of *B's* feelings? It could be that he was crippled for life as a result of conduct which did not amount to legal negligence but connoted a lack of moral responsibility in *A*. From the facts of *Stanley* v. *Powell* it would seem that the just decision was arrived at, but for the wrong reason. Surely the defence of *volenti non fit injuria* was applicable to the facts? As the carrier of game was a member of the shooting party, it could easily be said that he consented to run the risk of such injury. It is far from easy to determine the just decision in the following hypothetical example: As *A* was cleaning his gun it went off accidentally and the bullet penetrated a window and injured *B*. Is it just that *B* has no remedy in trespass? It is impossible to say without further facts and perhaps even the opportunity to examine the parties. It would be impossible to do this or even to learn more of the facts unless *B* implied negligence or intention in his pleadings. This was forcibly pointed out in the case of *Fowler* v. *Lanning*, where the essence of the pleadings was that *A* shot *B*. This was held to be bad. In such a case as this, however, if the plaintiff can state all the facts, then the court may decide to apply *res ipsa loquitur*. The burden of proof would thus be transferred to the defendant. This is not altogether satisfactory as, if the court decides against this approach, the plaintiff is back where he started. In the usual case the onus of proof will lie on the injured party and would seem to place him at some disadvantage. It is suggested that it would be just, in cases such as these, to transfer the burden of proof automatically.

Conclusion

Justice would be done, it is submitted, if an action for trespass to the person was allowed on the following conditions:—

(i) If in the pleadings allegations of intention are made then the law of assault and battery as it stands would be applicable.

(ii) In all other cases the full facts of the case should be pleaded and this would support the view of Diplock, J., in *Fowler* v. *Lanning*, that to hold otherwise would lead the defendant into court blindfolded.

(iii) On the proof of the injury alone the burden of proof would automatically be transferred to the defendant.

(iv) The nature of this burden would be to disprove negligence if the court inferred negligence from the actual wording of the pleadings, or to give an adequate explanation to the court's satisfaction of how the injury to the plaintiff came about.

(v) The court should be allowed complete discretion whether to allow the plaintiff to recover or not. In other words, if the defendant shows that his conduct was above question and that there was no lack of moral responsibility, then this would completely exonerate him. This would allow for cases which, although not constituting legal negligence, nevertheless call for some compensation to the plaintiff as a result of the defendant's conduct.

(vi) The defence of *volenti non fit injuria* would, of course, be open to the defendant.

These suggestions would not be applicable to the case where the plaintiff pleads specific items of negligence. There, the ordinary rules would apply. It is submitted that to allow an action on these terms, the courts would not only be satisfying the historian, but also those moralists who maintain that gross injustice would be done in not permitting an action at all. Such reforms could only be brought about by the House of Lords or by legislation.

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RECEIVING

THAT the apparent simplicity of the law of receiving tends to conceal certain complications which may arise in the course of its administration is clearly illustrated by a case which recently came before the Court of Criminal Appeal.

R. v. *Poole*

In the early hours of the morning a post-office in Southwark was broken into, its safe was blown open with gelignite and its contents were stolen. A constable who happened to be standing outside the premises on duty at the time saw through a spy-hole in the window two men in the act of rifling the safe, and identified one of them as being the appellant's brother. He could not identify the other man, yet the prosecution alleged that earlier that night two detectives saw the appellant and his brother reconnoitring the area in the latter's car. The next day two gelignite detonators, together with a small tin box containing a large sum in Bank of England notes, were found in the appellant's flat, and four of those notes were identified as having been kept in the said safe the day before the raid. After the search the appellant was alleged to have said to the police (*a*) that if he were identified on a parade he would tell them where the money had come from, (*b*) that his brother kept the key to the tin box, and (*c*) that one of his brother's girl friends must have talked too much. Accordingly, the two brothers were charged with (1) breaking and entering and stealing, and (2) causing damage by means of an explosive; the appellant alone was further charged with (3) receiving four £1 notes, and (4) possessing an explosive substance without lawful excuse. At the trial the appellant explained that the contents of the box belonged to his brother and consisted of money saved for the purchase of a house jointly by them. The appellant was convicted at the Central Criminal Court of receiving, and acquitted of the other charges. From that conviction he appealed to the Court of Criminal Appeal on the grounds, *inter alia*, (i) that there was a miscarriage of justice in that the jury returned a verdict of guilty on the count of receiving, although the trial had been conducted by the prosecution and by the defence—and treated by the learned judge—on the footing that the material counts against the appellant were those upon which he was acquitted, recent possession having been relied upon solely as evidence of breaking and entering and stealing; and (ii) that the learned judge failed adequately to direct the jury on the law of receiving.

The appeal

Now although the count of receiving was a substantive one, the fact that the appellant was found in possession of property stolen from the post-office quite soon after the breaking was, on the authority of *R.* v. *Loughlin* (1951), 35 Cr. App. R. 69, used by the prosecution as evidence of his being one of the two office-breakers. Moreover, as in the case of *R.* v. *Melvin* (1953), 37 Cr. App. R. 1, the learned judge dealt with the receiving charge in his summing up in a perfunctory manner, adding: "It is open to you to do so"—that is, to convict of receiving—"but I think you might take my advice on that particular point, that if you find William Poole not guilty on the first count in the indictment (that is, the one of breaking and entering and stealing), then it would not be right for you to find him guilty on the second count (i.e., the receiving one); acquit him on the second count as well." Delivering the judgment of the court, the Lord Chief Justice commented: "That, although it was prefaced by the words 'it is open to you to do so,' went as near as may be to a direction that they shall acquit on the count of receiving in any event." Indeed, there was no specific direction to the jury as to what constitutes possession and control, nor as to the appellant's knowledge at the time that the notes came into his possession that they were stolen, nor as to his explanation. In the circumstances—notwithstanding that the court was of opinion that if it had been left to the jury that the appellant was an accessory before the fact, or indeed if a full direction had been given in respect of receiving, the appellant would perfectly properly have been found guilty—the court refrained from applying s. 4 of the Criminal Appeal Act, 1907, and quashed the conviction ((1959), *The Times*, 23rd June).

The authorities

On the points raised by this case the authorities are perfectly clear. To begin with, it has been laid down in *R.* v. *Seymour* (1954), 38 Cr. App. R. 68, that in cases where the evidence is as consistent with larceny as with receiving, the indictment should contain counts for both offences, and the jury should be directed that it is for them to decide whether the accused was a thief or whether he received the property from the thief—that is, if guilty at all—after a warning that a man cannot be guilty of receiving from himself. But it often happens that, though both counts are open to the jury, as the trial develops, it becomes a case either of stealing or of receiving. Once it has become apparent that the case should be regarded as one of larceny or nothing, only the count for larceny should be left to the jury (*R.* v. *Christ* (1951), 35 Cr. App. R. 76). When, however, the charge of receiving is left to the jury, the proper direction to be given to them with regard to recent possession is in these terms: Where the only evidence is that the prisoner is in possession of property recently stolen, a jury may infer guilty knowledge (*a*) if he offers no explanation to account for his possession, or (*b*) if the jury are satisfied that the explanation he does offer is untrue. If, however, the explanation offered is one which leaves the jury in doubt whether he knew the property was stolen, they should be told that the case has not been proved and therefore the verdict should be Not Guilty. If there is evidence that the accused was in possession of property recently stolen and other evidence as well which tends to show guilty knowledge, the jury should be directed, so far as they are dealing with recent possession, in the above mentioned terms, and the summing up should then deal with the other evidence, which may or may not be consistent with the explanation, if any, which the accused has given (*R.* v. *Aves* (1950), 34 Cr. App. R. 159).

Lastly, assuming there is evidence of receiving, if the defence has not been heard on the issue and has had no opportunity of dealing with it—the case having been treated from the outset as one of larceny—a conviction of receiving in these circumstances will be quashed (*R.* v. *Lincoln* (1944), 29 Cr. App. R. 191).

Recent possession

Now recent possession gives rise to three rules of law. First, when the accused obtains possession of property shortly after the theft thereof, the jury may—in the absence of any explanation from him as to how he became possessed of it—infer guilty knowledge (*R.* v. *Schama, R.* v. *Abramovitch* (1914), 11 Cr. App. R. 45). Secondly, and in the alternative, they may infer that he stole it (*R.* v. *Loughlin, supra*). Thirdly—if the owner of the property is unknown and, therefore, there can be no direct evidence of how owner and property parted—the circumstances, including recent possession, from which inference of guilty knowledge may be drawn, may also indicate that the property is stolen property and not property which left its owner (whoever he might be) honestly (*R.* v. *Young* [1953] 1 All E.R. 21).

Again, whenever recent possession is relied upon as evidence of guilty knowledge, at the close of the case for the prosecution one question must and two more might arise in the mind of the judge or magistrate. First, is the evidence given of such cogency as to warrant a conviction in the absence of any explanation by the accused? If it is not, that is the end of the case. If, however, the weight of the evidence establishes a *prima facie* case, then the further question arises: has the accused given any account as to how he came by the property involved? If he has not, the issue of Guilty or Not Guilty must go to the jury—whether or not any evidence is called on his behalf—because recent possession does not raise a presumption of law against the accused (*R.* v. *Jackson* (1953), 37 Cr. App. R. 43). But if he has offered such an account, then a third question arises—is it plausible and consistent with innocence? If it is, the case must be stopped; because if the accused's explanation is reasonable, it is incumbent on the prosecution to disprove it in order to succeed (*R.* v. *Crowhurst* (1844), 1 Car. & K. 370). If, however, the explanation is not obviously reasonable, then there is a *prima facie* case to be left to the jury. Yet it is not the duty of the prosecution to disprove an account which is unreasonable or the truth of which is improbable (*R.* v. *Harmer* (1848), 2 Cox C.C. 487).

Possession

As to possession, it stands to reason that where there is no evidence of it, the judge ought to direct an acquittal (*R.* v. *Hughes* (1878), 14 Cox C.C. 223). For instance, it has been held that the fact that the accused has been in possession of a cheque given in payment for the purchase of stolen goods, is not sufficient evidence of possession of stolen goods to justify a charge of receiving them knowing them to have been stolen (*R.* v. *Barrow* (1934), 24 Cr. App. R. 141). But if there is such evidence, then there must be sufficient direction by the judge to indicate to the jury the real test to be applied (*R.* v. *Berger* (1915), 11 Cr. App. R. 72). The handling of the property or the absence of such handling is not necessarily material either way; it is control that matters—whether sole or joint—there being two sorts of possession, physical and constructive (*R.* v. *Flatman* (1913), 8 Cr. App. R. 256). Thus if a person knows that goods are stolen and lays his hands on them, the mere manual possession does not of itself make him guilty of receiving stolen property; because the control may be in some other person (*Hobson* v. *Impett* (1957), 41 Cr. App. R. 138). On the other hand, if property is in custody of a person over whom the accused has absolute control—so that it would be forthcoming if the accused ordered it—manual possession or touch is unnecessary to sustain a conviction. Indeed, a person having a joint possession with the thief may be convicted as a receiver or as being concerned in the actual theft (*R.* v. *Smith* (1855), Dears. C.C. 494). Where joint tenants or husband and wife are involved, however, each case must be considered on its own particular merits. For instance, if one of the two was treated throughout as the thief, the mere fact of knowledge in the other and the mere fact that he or she did nothing about it would not constitute him a receiver (*R.* v. *Peach*, p. 814, *ante*).

Yet possession and guilty knowledge do not complete the crime of receiving, since if the receipt is innocent at the time when the property is received the fact that the person who has taken the property subsequently changes his mind and misappropriates it does not render the taking either receiving stolen property or larceny (*R.* v. *Matthews* (1950), 34 Cr. App. R. 55). A receipt with felonious intention must be established by the prosecution (*R.* v. *Dickson & Gray* [1955] Crim. L.R. 435). Tortious taking, however, is not deemed innocent; so that when the original taking amounted to trespass only, but the taker subsequently misappropriated the goods, it was held that the misappropriation converted the tort to larceny (*R.* v. *Read* (1949), 33 Cr. App. R. 67).

These are some of the interesting points which may be encountered in the course of the trial of a charge of receiving.

J. Y.

"THE SOLICITORS' JOURNAL," 29th OCTOBER, 1859

On the 29th October, 1859, The Solicitors' Journal reported the third half-yearly meeting of the Solicitors' Benevolent Association. The chairman, Mr. Hope Shaw, said: "If there was one society connected with the profession with which more than another it must be the pride and the pleasure of every one of them to find his name prominently associated, it was the Solicitors' Benevolent Association . . . With this society the name of Mr. Anderton would ever be associated, not only as . . . one of its founders, but as one by whose indefatigable attention and unbounded liberality it had been conducted up to the present time and attained a degree of prosperity and stability which . . . must . . . afford everyone the highest satisfaction . . . In a profession where everything depended, not only on the preservation of a certain degree of bodily health, but on preserving unimpaired their mental power . . . it was above all things incumbent upon its members to make provision for those who suddenly, and without any fault of their own, were liable to be reduced to a state of destitution. In one sense he could hardly call it a charitable institution. He agreed with the view . . . that it might be considered a mutual benefit and mutual insurance society . . . Mr. James Anderton read the report which stated that 222 additional members had been enrolled within the last half-year . . . The receipts during the half-year had been as follows: In addition to the balance in hand at the date of the last report, £245 6s. 1d.; the life and annual subscriptions £1,373 8s.; donations £230 5s. 6d.; dividends on stock £38 15s. 6d.; total £1,887 15s. 1d. Out of this a further sum of £1,300 had been invested, increasing the stock to the sum of £3,127. The total of disbursements was £367 4s. 9d. . . . Of the measures adopted during the past half-year to promote the interests of the association, the public dinner . . . under the presidency of . . . the Lord Mayor proved highly advantageous."

THE TERRITORIAL SEAS AND FISHERIES DISPUTES—I

THE questions, which are closely associated, of the breadth of a State's territorial sea and the extent of its exclusive fishery limits are two of the most difficult in the international law of the sea. That there is a minimum breadth of three miles is undoubted, but there is no general agreement as to whether this is also the maximum breadth or, if it is not, as to what that maximum is. Many States, including most of the important maritime States, claim only three miles. A larger number claim a greater breadth. Some of these, including the U.S.S.R., claim twelve miles. Certain South American States claim very large areas, in some cases 200 miles.

In the face of this diversity of opinion it is perhaps not surprising that the first United Nations Conference on the Law of the Sea, held in Geneva in 1958, although on the whole successful, was unable to reach any agreement on the breadth of the territorial sea by the required two-thirds majority, and art. 1 (1) of the Convention on the Territorial Sea and the Contiguous Zone, therefore, merely states—

> "The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the Territorial Sea"

without stating the extent of this belt of sea.

It is proposed to hold another U.N. conference to attempt to reach agreement on this matter also, but meanwhile there are urgent problems in need of solution, of which the fisheries dispute between Iceland and the U.K. is an important one. A similar question which arose between Denmark and the U.K. about fishery limits off the Faroes Islands has recently been amicably settled by the two governments, the U.K. foregoing the right to fish within six miles of the coast, but this has not been possible as yet in the case of the Icelandic dispute, although an interim six-mile limit has been offered by the U.K. government, nor has it been possible to bring the matter before the International Court of Justice. In international law the judicial settlement of disputes is voluntary, and Iceland is apparently unwilling to place the matter before the International Court. Uncertainty in its rules is in many cases a weakness of international law and this uncertainty tends to be continued by the absence of any international legislature which can cure the defect by creating new rules which are binding upon States. The only means of international "legislation" is by treaty, and it is only in very rare cases that a State can ever be bound by the provisions of a treaty to which it has not consented. As there is here no relevant treaty in force, questions of fishery disputes fall to be decided by the rules of international customary law and it is not easy, in cases where States take widely different views, to point to any practice widely enough accepted to amount to a binding custom. Moreover, even if a rule can be elicited from State practice, there remains the problem of the application of the rule to particular facts, which may itself be a source of disagreement.

The Icelandic fisheries dispute

The interests of Iceland and the U.K. in the matter of fishing near the coast of Iceland are clearly in conflict. Each is trying to assert, by force if need be, what it avers to be its legal rights. The possibility of the occurrence of some serious incident cannot be overlooked, and already relations between the two States are strained, while the possible consequences upon the functioning of N.A.T.O. are a matter of concern to other members of that organisation. The dispute springs in great part from the different views held by the two States on the delimitation of the territorial sea and of exclusive fishing limits. Iceland now claims the right to exclusive fishing in a belt of sea twelve miles wide extending outwards from straight base-lines joining the headlands of her coast. Her justification for this recently increased claim is that fishing is of vital importance to her economy and that the stocks of fish off her coast are declining because of fishing by foreign vessels. It may perhaps be noted that in a letter to the *Observer* Major-General Sir Farndale Phillips, of the British Trawlers' Federation, Ltd., denied the validity of certain of Iceland's contentions and pointed out that between 1938 and 1955, when the total annual catch of fish taken around Iceland increased from 469,000 tons to 841,000 tons, the annual catch by the Icelandic fleet increased more than two-and-a-half times, Iceland's proportion of the total catch increasing from 31 per cent. to 45 per cent. The catch of the British fishing fleet, on the other hand, increased by less than one-third, and fell during the same period from 37 per cent. to 26 per cent. of the total catch. In the British view any conservation measures which may be necessary ought to be taken by international agreement, not by the unilateral action of Iceland in claiming the fishing grounds for herself. The British view is that the proper width is three miles and that the base-line of the territorial sea is, basically, the low water-mark following the sinuosities of the coast. The area outside the territorial sea as thus delimited is in the British view part of the open sea and, as such, open to the fishermen of all States.

Categories of sea areas

The sea falls under several different legal régimes under international law. As rights of States in these several areas differ so greatly it is necessary to give a brief account of them. The largest area is that of the open sea which is now universally recognised to be subject to the sovereignty of no State. In former times certain States did make very extensive claims to sovereignty over what is now the open sea, but these were gradually dropped, and at the present time all States have equal rights over the open sea. The most important of these rights are the rights of fishing, navigation in and flying over the open sea, and the laying of cables and pipelines. These rights must be exercised with reasonable regard to the interests of other States, but are otherwise unrestricted by law, though States sometimes voluntarily restrict themselves by treaty. No State has jurisdiction over foreign nationals on the open sea, except in very rare cases.

It has, however, long been recognised that a State has sovereignty over a comparatively narrow belt of coastal waters, namely, its territorial sea, and over its internal waters. The latter are the areas to the landward of the territorial sea in those cases where the base-line of the territorial sea is not the low water-mark. For example, where the base-line of the territorial sea is drawn across the mouth of a bay, the waters to the landward of that line are internal waters. States have full sovereignty and wide powers of jurisdiction over their internal waters and territorial sea. In the case of internal waters international law imposes practically no restriction on the coastal State. In its territorial sea a State's exercise of its sovereignty is restricted to a limited

extent in certain defined ways. Thus it cannot exclude foreign ships (probably even warships) which are merely exercising their right of innocent passage. On the other hand, it has the right of exclusive fishing.

Further, it has been recognised in recent times that there may be a belt of sea contiguous with and to the seaward of the territorial sea over which a coastal state may exercise certain limited rights of control. This contiguous zone may not extend more than twelve miles from the base-line from which the territorial sea is measured, so that if in fact the state's territorial sea is itself twelve miles wide, this contiguous zone is absorbed by it. If there is a contiguous zone it remains, however, part of the open sea. In this zone coastal States have no sovereignty but are given certain rights of control for the purpose of preventing and punishing infringements of customs, fiscal, sanitary or immigration regulations within their territory or territorial sea. These rights do not include the right to control fishing and *a fortiori* there is no right of exclusive fishing.

The sea bed

It may be mentioned here that under another recent development in international law States have the exclusive right to exploit the natural resources on the sea bed and its subsoil within their continental shelf. This right to exploit the continental shelf does not in any way affect the status of the super-jacent waters, which remain either internal waters, territorial sea or open sea, as the case may be. The natural resources exploitable, though they will be principally mineral resources (in particular oil), include fish of sedentary species but not free-swimming fish. The right to take the latter thus continues to depend on whether the sea in which they swim is part of the open sea or of the territorial sea.

Delimiting the territorial sea

These differences make it essential to know where the outer and, in cases where there may be internal waters, the inner limit of the territorial sea is to be drawn. The answer to these questions depends on two things, the breadth of the territorial sea and the base-line from which that breadth is to be measured. Both of these are controverted topics, the former more so than the latter.

The reason why there is controversy is simply that the interests of States conflict. Thus States with a large merchant marine usually want a narrow territorial sea so that their ships have fuller freedom of navigation. The sea, and the air space above it, are of importance to all States as a means of communication and intercourse, but are of particular importance to some. In spite of this, coastal States on the other hand often want a wide territorial sea, or at any rate rights of control over a wide area of sea. This is often for strategic, political or customs reasons. Thus, the U.S.A. in the era of Prohibition found itself very handicapped in the prevention of bootlegging by its three-mile limit, but was able to gain additional rights by a series of treaties with other States. The principal reason, however, is that under the present law the right of exclusive fishing is coterminous with the territorial sea, so that the wider that area, the greater the area of exclusive fishing.

Conservation of fisheries

Fishing is often of great economic importance to the coastal State. In some cases it may be the staple industry and vital to the national economy. Thus Iceland claims that sea products form 97 per cent. of her exports. On the other hand, fishing in distant waters may be of great economic importance to other States, who by use of ocean-going trawlers are able to feed large populations without the expenditure of foreign currency. As the best fishing grounds are usually near the land, an extension of the coastal State's territorial sea would deprive other States of a good deal of their catch of fish. Thus, it has been estimated that an extension of the territorial sea from three to six miles would deprive France of 14 per cent. of her catch total from distant waters. The position is complicated by the very real need of conserving the sea's stocks of fish. New techniques of finding and catching fish and keeping it wholesome, plus the increasing demands of growing populations, bring with them a risk of over-fishing certain areas.

A coastal State has no power to control or restrict fishing by foreigners in the sea outside its territorial sea, even in the breeding grounds which may lie just outside it. It can, of course, restrict its own nationals, but restrictions imposed on them alone are naturally unpopular. The freedom of foreigners to fish may perhaps be indirectly restricted by refusing to allow them to sell their catches in the coastal State, but the efficacy of this has decreased with the advent of refrigeration, which permits fish to be taken elsewhere for sale. The only direct way in which a coastal State can take conservation measures on the open sea is by treaty with other fishing States. There are many such treaties, for generally speaking it is in the interests of all fishing States to prevent over-fishing. But to the "foreign" State, conservation may be a less vital matter than to the coastal State. Its trawlers may be able to move to other fishing grounds. But the inshore fisherman, with his small craft, cannot.

In its territorial sea, however, the coastal State can take conservation measures against all. It will usually permit only its own subjects to fish there and this without more may be enough to prevent overfishing.

A coastal State may thus want to increase its area of exclusive fishing either to keep a valuable asset for itself, or to take necessary but otherwise impossible conservation measures, or both. It may seek to do the former under the guise of doing the latter, as some suspect Iceland of doing. At any rate, if it can extend its territorial sea it can do both. A narrow territorial sea, particularly if its base-line is a line following the sinuosity of the coast, is felt by some States to give insufficient protection to their fishing interests. A wider territorial sea, however, will interfere with the interests of other States, both in fishing and navigation. Apparently even a moderate extension of the width of the territorial sea over three miles, if that be the present limit, would affect some shipping lanes very considerably, and some maritime States do not regard the right of innocent passage, which is exercisable in the territorial sea, as being a sufficient safeguard in this respect. They prefer the unrestricted right of passage exercisable over the open sea.

(To be concluded)

A. R.

Personal Notes

Mr. WILLIAM GORDON MCKEAG, solicitor, of Tynemouth, was married recently to Miss Tessa Rosemary White, a Northumberland County tennis player.

Mr. J. H. G. PETERS, managing clerk with Messrs. F. W. Hughes & Son, of London, completed fifty years' continuous service with that firm of solicitors on 14th October.

A Conveyancer's Diary

CHRIST'S HOSPITAL v. GRAINGER

In Tudor on Charities (5th ed., p. 81), it is stated that a gift over from one charity to another is never void for remoteness, but a gift over from a charity to a non-charitable object is void unless it must vest (if it vest at all) within the permitted period. The main authority for the first of these propositions is *Christ's Hospital* v. *Grainger* (1849), 1 Mac. & G. 460, which was followed by the Court of Appeal in *Re Tyler; Tyler* v. *Tyler* [1891] 3 Ch. 252; the rule was recently mentioned by Roxburgh, J., in *Re Watson's Settlement Trusts; Dawson* v. *Reid* [1959] 1 W.L.R. 732; p. 528, *ante*. The second of these two propositions rests mainly on *Re Bowen; Lloyd Phillips* v. *Davis* [1893] 2 Ch. 491, which is quite clear on this point; it is, nevertheless, very difficult to support by any process of reasoning.

In the *Christ's Hospital* case a testator made a gift in 1627 to the Corporation of Reading for certain charitable purposes, with a direction that should the donees neglect to perform the directions of his will such gift should be void and the property should be transferred to the Corporation of London for the benefit of Christ's Hospital. The Corporation of Reading did neglect the testator's directions for a period of far more than a year (readers of the Barchester novels will recall that this was a period when neglect of this kind on the part of charitable trustees was beginning to come to light in numerous cases), and the Corporation of London claimed the property for the benefit of Christ's Hospital. It was argued, among other things, that the gift over to the Corporation of London was void as contrary to the rules against perpetuities. The judgment of the Lord Chancellor (Lord Cottenham) on this point is very short. "These rules," he said, "are to prevent, in the cases to which they apply, property from being inalienable beyond certain periods. Is this effect produced, and are these rules invaded, by the transfer, in a certain event, of property from one charity to another? If the Corporation of Reading might hold the property for certain charities in Reading, why not the Corporation of London hold it for the charity of Christ's Hospital in London? The property is neither more nor less alienable on that account." The Corporation of London was thus held to be entitled to the property for the benefit of Christ's Hospital.

Transfer of property between charities

In *Re Bowen*, a testator gave two sums of money for the establishment and maintenance of certain schools and directed that, if the government should thereafter establish a general system of education, these legacies should determine; and he bequeathed the two sums in the same manner as he had bequeathed his residuary personal estate. A general system of education was established. Stirling, J., referred to the *Christ's Hospital* case and *Re Tyler* as having decided that the rule against perpetuities had no application to the transfer in a certain event of property from one charity to another. He then went on to say that the principle of these decisions did not, in his opinion, extend to cases where (1) an immediate gift in favour of private individuals is followed by an executory gift in favour of charity, or (2) an immediate gift in favour of charity is followed by an executory gift in favour of private individuals. As authority for (1) he referred to *Chamberlayne* v. *Brockett* (1822), L.R. 8 Ch. 206. As to (2), there was at that time no English authority, but in two cases decided in the courts of Massachusetts it had been held that the rule against perpetuities applied to avoid such a gift over from charity to private individuals. Stirling, J., followed these two cases and held the gift over to be bad.

The difficulty which presents itself to me about this decision can be stated in a few short propositions. (1) A gift over to an individual which is limited so that it can take effect outside the period allowed by the rule against perpetuities is bad because the event on which it is limited to take effect is too remote. (2) If a similar gift over is made to a charity, the gift is bad notwithstanding that it is to a charity, for precisely the same reason—remoteness (*Chamberlayne* v. *Brockett*). (3) If the fact that the gift over is to a charity will not save it, must not the real *ratio decidendi* of the *Christ's Hospital* case be, that the event on which the gift over in that case was limited to take effect, *viz.*, the failure of a charity, is not obnoxious to the rule against perpetuities? (4) If so, whether the donee under the gift over is a charity or an individual does not enter into the question, and *Re Bowen* should have been decided in the same way as the *Christ's Hospital* case.

Object of perpetuity rule

I have not read the two American decisions which were referred to in *Re Bowen* and do not know on what grounds they were based. There is support for the difficulty which I feel about *Re Bowen* in the way in which Lord Cottenham approached the similar (indeed, if *Re Bowen* was wrongly decided, essentially the same) problem in the *Christ's Hospital* case. The mischief which the rule against perpetuities is designed to remove is the rendering of property inalienable for long periods. But charities endure (in theory, at least) for ever, and property in the hands of a charity may in practice remain inalienated for very long periods. That being so, to adapt Lord Cottenham's words to the case which arose in *Re Bowen*, if the property might be held in trust for the charity (the schools), why might not the private individuals (under the gift over) hold it when the event on which the gift over was limited to take effect occurred, whenever that was? "The property is neither more nor less alienable on that account."

Re Bowen has stood for nearly sixty years, and has been followed in our courts in other cases. But it is open to review in the Court of Appeal and, as I hope I have shown, the reasoning on which it is based is open to objection. Or, to put it the other way round, the reasoning by which an opposite conclusion can be reached appears convincing.

"A B C"

THE LAW SOCIETY

On 20th October, the president of The Law Society, Sir Sydney Littlewood, made a presentation on behalf of the Virginia State Bar to those Members of Parliament who had tabled a motion commending the Virginia State Bar for celebrating in May the 350th anniversary of the advent of the common law to the United States of America.

Landlord and Tenant Notebook

NO RESPONSIBILITY FOR REPAIR

MANY readers will have had the experience of being asked by a landlord or by a tenant *which* of them is responsible for some particular repair, and of noting the look of blank astonishment with which the client greets the answer "neither."

The decision in *Sleafer* v. *Lambeth Metropolitan Borough Council* [1959] 3 W.L.R. 485 (C.A.); p. 599, *ante*, demonstrates very forcibly that "Someone has got to hold the baby" is not a legal maxim.

The plaintiff in that case sued his landlords for damages for injuries which he had sustained as a result of a defect in the demised premises, a flat. The front door, which opened inwards, had taken to jamming; the plaintiff had reported the defect and one day, when he was trying to close the door by pulling on the letter-box knocker, the knocker came off and the plaintiff fell heavily against an iron balustrade and injured his back.

There was no suggestion that the defendants were liable in tort, and the claim was based on the terms of the tenancy agreement—a perusal of which, Willmer, L.J., observed, may well have left the council's tenants in a state of bewilderment (for "Notebook" criticism of councils in this respect, see our issue of 26th July, 1958: 102 SOL. J. 538). The terms, set out in a document signed by the plaintiff, included the following: by cl. 2, "The tenant is required to reside in the dwelling . . ."; by cl. 5, "The tenant shall repay to the council the cost of repairing any damage done to the dwelling or to the fixtures or fittings . . ."; by cl. 9, "The tenant shall not do nor allow to be done any decorative or other work to any part of the dwelling without consent in writing . . ."; by cl. 11, "The council shall be at liberty . . . by its agents or workmen to enter the dwelling to inspect the state of repair and to execute repairs therein . . ."; and by cl. 15, "The tenant shall deliver up the dwelling at the end of the tenancy together with all landlords' fixtures in good and tenantable repair and condition (subject to fair wear and tear) and with all locks, keys and fastenings complete."

The argument advanced for the plaintiff-appellant was that there was a duty on the landlords, in all the circumstances, to effect repairs; or that there was an implied term obliging them to make the premises fit for habitation if notified of defects.

Business efficacy

It was recognised that any tenant in the position of the plaintiff is up against such well known authorities as *Hart* v. *Windsor* (1844), 12 M. & W. 68, with Parke, B.'s: "It appears, therefore, to us to be clear upon the old authorities that there is no implied warranty, still less a condition, in a lease of a house that it is, or shall be, reasonably fit for habitation." The learned baron did observe that there would be "no apparent injustice in inferring a contract of this nature," but thought it "much better to leave it to the parties in every case to protect their interests themselves by proper stipulations." It will have been noticed that the decision (to which I will refer later) actually concerned complaint that the house was unfit when let, but the passage cited would cover upkeep during term.

Morris, L.J., held that the council in the case before the court had expected to do repairs but had been careful to avoid making themselves bound to do them. Clause 2, the learned lord justice considered, was explicable by reference to the housing shortage: the idea was to prevent anyone from taking a flat he did not genuinely mean to occupy. Ormerod, L.J., did not mention this clause, but it is of interest that Willmer, L.J.'s opinion was that there was much to be said for the view that the clause impliedly obliged the landlords to do such repairs as made it possible for the tenant to carry out his obligation; which, however, would not extend to the repairing of a faulty door, faulty because of binding of one of its sides and of the weather board.

Clause 9, both Morris and Ormerod, L.JJ., considered, imposed a restriction rather than a prohibition, being designed to enable the council to keep some control over the work done. Read together with cl. 15, it did not mean that the tenant might not do any repairs. No specific reference was made to the requirement of consent.

Contemplation

A passage in the judgment of Somervell, L.J., in *Mint* v. *Good* [1951] 1 K.B. 517 (C.A.), to which counsel for the tenant attached much importance, includes the following: "It must be in the contemplation of both parties to such a weekly tenancy that the tenant will not be called upon to do repairs . . . Both sides, I think, must contemplate as *the basis of the contract* that the house will be kept in reasonable and habitable condition; that that will be done by the landlord and not by the tenant; and, although he does not bind himself to do so, that he will have the right to enter and look after his own property by doing repairs."

If it were not for the "although he does not bind himself," etc., this statement would indeed have constituted a danger to the landlords' case. But, Morris, L.J., said the result was that the words merely meant that the parties contemplated that in fact and in practice the landlord would do the repairs, "but I think that Somervell, L.J., was making it clear that there must be that expectation, although the landlord was not bound to do the repairs."

Necessary implication

The obligations of the landlords, Morris, L.J., said, must be found in the contract or in any *additional* term which must necessarily be implied in the contract; Ormerod, L.J., may be said to have dealt with the point rather more fully, and perhaps more provocatively, when he said: "A tenancy agreement, like any other agreement, must be read as a whole, and it may well be that in construing the agreement it is possible to imply an obligation on the landlord to do repairs. But the question which the judge had to decide and which this court has to decide was whether in this particular agreement such an obligation could be implied"; but after agreeing that it created no more than an expectation or hope on the part of the tenant, Ormerod, L.J., referred to "evidence that the practice has been for the council to do the repairs."

Before discussing the possible effect of such a practice, it may be useful to make some comment on the importance attached to *Hart* v. *Windsor*, *supra*, which Morris, L.J., selected as correctly stating the law on landlords' implied undertakings to repair.

In his judgment Parke, B., repeated a recantation (if I may use that expression) which he had expressed in *Sutton* v.

Temple (1843), 12 M. & W. 52, admitting that he had been in error in holding that there had been an implied warranty in one or two other cases in which he had been called upon to adjudicate. But when one comes to consider the "old authorities" which the learned baron proposed to follow, it is worthy of comment that these concerned the withholding of rent in cases in which premises had been destroyed by fire, overrun by enemy forces, etc., and the "therefore" which he used almost provokes the suggestion *non sequitur*.

Usage

Next, it may be remarked that in *Hart* v. *Windsor*, and some later authorities, such as *Keates* v. *Cadogan* (*Earl*) (1851), 10 C.B. 591, and *Gott* v. *Gandy* (1853), 2 El. & Bl. 845, the tenancies before the court were not weekly tenancies nor tenancies of properties normally let by the week. The fact that the Legislature has since recognised that in the case of low-rented properties Parke, B.'s recommendation that the parties should "protect their interests by proper stipulations" would not be desirable is, I would agree, consistent with the view that these decisions do or would, as far as common law is concerned, apply to weekly tenancies; what is of some interest is the willingness of the Court of Appeal, manifested in *Broggi* v. *Robins* (1899), 15 T.L.R. 224 (C.A.), to imply an obligation to repair by reference to usage.

In that case, the plaintiff had taken a weekly tenancy of two rooms in Soho, and his child had been badly burned when a defective plank in the floor gave way and she fell into the fire. The Court of Appeal (in which the late Marshall Hall, Q.C., appeared for the appellant landlords) decided the case in their favour on the ground of absence of notice (leaving undecided the question whether there was any duty to the tenant's child, a question later resolved in favour of landlords by *Cavalier* v. *Pope* [1908] A.C. 428—which remained law until the enactment of the Occupiers' Liability Act, 1957, s. 4). But Lord Russell of Killowen's judgment, with which A. L. Smith and Collins, L.JJ., concurred, referred to "the evidence of one of the defendants and their agent, to the effect that, though they *never actually agreed* to keep the premises in repair, yet in fact they always did whatever repairs were necessary," and the learned lord chief justice proceeded to say that "this seemed to him to be an admission that in the usual course of things landlords did repairs in *tenancies of that kind*" and to warrant the upholding of Day, J.'s reasoning and decision on that point, making the usage a term of the tenancy.

To reconcile Morris, L.J.'s "I have no doubt that in fact, and in practice, the borough council intended to do the necessary repairs, but the question arises whether they had obliged themselves to do such repairs. I can find nothing in these conditions which shows that they had," with Lord Russell's *dictum*, it would be necessary to distinguish the two cases by reference to the express terms of the agreement in the recent one, bewildering as they were said to be.

Triviality ?

It was not suggested that the tenant ought to have done the necessary work characterised by Willmer, L.J., as "such a trivial repair as the unsticking of this door," either with or without consent under cl. 9. It might well be questioned whether it came within the scope of Denning, L.J.'s judgment in *Warren* v. *Keen* [1954] 1 Q.B. 15 (C.A.), in which it was held that the "wind and watertight" criterion of tenant-like manner, in the case of implied obligations of tenants, did not apply to weekly tenancies (if it did to any). The tenant, Denning, L.J., said, must do the little jobs about the place which a reasonable tenant would do; and instanced chimney and window cleaning, mending electric light when fused, unstopping the sink when blocked by his waste. We are not told why the door in *Sleafer* v. *Lambeth Metropolitan Borough Council* "had dropped a little so as to cause it to bind on the threshold or the weather plate fixed inside the threshold"; and it would be interesting to know why Willmer, L.J., said: "As I understand it, it would be the simplest possible operation to put a door which is out of adjustment in that way into proper repair."

R. B.

HERE AND THERE

SNUFF AND BUBBLEGUM SEQUEL

For the lawyers one of the best things about that hilarious film, "Brothers in Law," was its technical authenticity. There was not one of the episodes which simply could not have happened in real life, although it was unlikely that they would all have happened to the same young man. It keeps one, as no doubt it keeps the learned author, always on the alert for genuine oddities in the court news which might be embodied in a sequel—a judge counting his ribs or his vertebræ in court, perhaps, or a judge asking, "What is a roll-on?" One might add a private view of the fit of the garment entrusted to a responsible matron recruited from the body of the court. Something like that has actually happened before now. For the collectors of such episodes two recent specimens may perhaps usefully be stored in the file, one under B for Bubblegum (Vaisey, J.) and the other under S for Snuff (Stable, J.). I don't know what Lord Nottingham or Lord Hardwicke or Lord Eldon would think that Chancery was coming to if they became aware in their celestial retirement that bubblegum was now a subject-matter of litigation there. Dickens, of course, would have loved the idea and would have blown it up in wreathèd fantasies of exaggeration all over the old Hall of Lincoln's Inn. When Mr. Justice Vaisey was handed a box of the stuff he asked: "What am I supposed to do with this? What does an innocent child do with this?" and suggested that the leaders on either side might give a demonstration, but one of them replied: "We are instructed to do many things as counsel, but I don't think we could be instructed to chew this substance." Not instructed perhaps, but in the heat of zealous advocacy they might volunteer. The great Tim Healy once, appearing for the defendants in a case of alleged pollution of a stream dramatically drank in court a specimen bottle of the water in dispute to demonstrate its purity. The S for Snuff would refer to a recent episode at the Northamptonshire Assizes when Mr. Justice Stable briefly adjourned a case with the explanation: "I am sorry to say I carry a box of snuff in my pocket. Unfortunately the lid has come off and it is all over my pocket; I want to collect it." Now the film producer, with cinematographic licence, would, of course, heighten and amalgamate the two episodes. While counsel, or at any rate a witness, was demonstrating the qualities and uses of bubblegum, the snuff-box would fall from the judge's pocket and burst open, spreading a cloud

of snuff all over the court. The combination of snuff and bubblegum has multifarious possibilities for the camera.

MULTILINGUAL

THE Chancery Division seems to have a great deal of fun these days. There was recently raised before Mr. Justice Roxburgh the question whether a septuagenarian litigant in person, whose native tongue was Serbo-Croat, might conduct his case in that language through an interpreter. Statutes and precedents going back to the Middle Ages failed to throw any decisive light on this novel question. A compromise offer by the plaintiff to conduct his case in French, which both he and the judge understood, did not prove acceptable. All who know the learned judge's activity of mind and readiness of speech will regret that he did not find himself able to allow the case to proceed in Serbo-Croat or, better still, on a multilingual basis. The claim itself was of substance, a matter of £2½m. sought to be recovered from the liquidation of a mining company which had carried on no operations in Jugoslavia since 1941. There was also a suggestion of litigation proceedings in the Jugoslav courts. A tripartite multilingual argument on such a subject-matter before so acute and painstaking a judge as Mr. Justice Roxburgh would certainly have been an object-lesson in Chancery practice and procedure. Perhaps this too should be filed in the film producer's records. He might choose to combine all three episodes in one enormous court climax. The company sued by the Jugoslav litigant would have started to manufacture bubblegum to replace its lost mining operations. The plaintiff would claim in voluble Serbo-Croat to be the true inventor of the stuff. Then would come the demonstration, then the snuff. Would any producer care to consult my authentic files ?

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

The Seventeen Residuary Elephants

Sir,—Your problem requires the application of some elephant sense. You did not tell your readers that the testator left an estate of seventeen elephants. You told them something quite different, *viz.*, that after payment of debts and funeral and testamentary expenses the only assets consisted of seventeen elephants. You did not mention the gross amount of the estate.

Your omission makes it difficult for any ordinary reader to give an answer to your question. I am writing to make good your omission and to let you know that the slicing hotchpot solutions offered by your correspondents make any self-respecting elephant trumpet.

You told your readers that the testator by his will gave his sons fractional shares totalling seventeen-eighteenths of his "entire estate." The testator meant what he said; and with Mr. *X's* assistance his wishes were carried out with legal accuracy.

The facts which you omitted to disclose were: (1) That the gross estate consisted of eighteen elephants, and (2) that the debts and funeral and testamentary expenses were precisely discharged by the proceeds of sale of one elephant—sold by the executors to Mr. *X* a few days before they consulted him as to the proper residuary distribution.

Mr. *X* looked up Pt. II of Sched. I to the Administration of Estates Act, 1925, showing the proper order of application of assets of a solvent estate and found that the first asset mentioned was: "Property of the deceased undisposed of by will." The rest was easy.

You ask how I have guessed the facts ? It is no guess, sir. I know; because I was and remain

THE EIGHTEENTH ELEPHANT.

Bristol.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Baking Industry Exemption (No. 2) Order, 1959. (S.I. 1959 No. 1747.) 5d.

County of Inverness (Kirkhill) Water Order, 1959. (S.I. 1959 No. 1726.) 5d.

County of Inverness (Voaker Burn, Struan, Skye) Water Order, 1959. (S.I. 1959 No. 1725.) 5d.

Eastbourne Water Order, 1959. (S.I. 1959 No. 1738.) 9d.

Fishguard - Aberystwyth - Dolgelley - Caernarvon - Bangor (Menai Suspension Bridge) Trunk Road (Maentwrog Bridge Diversion) Order, 1959. (S.I. 1959 No. 1727.) 5d.

London-Edinburgh-Thurso Trunk Road (Grantham and Great Gonerby By-Pass Link Roads) (No. 3) Order, 1959. (S.I. 1959 No. 1729.) 5d.

Minister of Aviation Order, 1959. (S.I. 1959 No. 1768.) 5d.

Minister of Labour Order, 1959. (S.I. 1959 No. 1769.) 5d.

Neath-Abergavenny and East of Abercynon-East of Dowlais Trunk Roads (Hirwaun and Other Diversions) (Variation No. 2) Order, 1959. (S.I. 1959 No. 1745.) 5d.

Stopping up of Highways Orders, 1959:—

County of Essex (No. 16). (S.I. 1959 No. 1739.) 5d.
County of Essex (No. 17). (S.I. 1959 No. 1740.) 5d.
County of Glamorgan (No. 2). (S.I. 1959 No. 1736.) 5d.
London (No. 45). (S.I. 1959 No. 1741.) 5d.
County of Wilts (No. 9). (S.I. 1959 No. 1742.) 5d.

Draft **Teachers' Salaries** (Scotland) Regulations, 1959. 2s. 4d.

SELECTED APPOINTED DAYS

October

21st Minister of Aviation Order, 1959. (S.I. 1959 No. 1768.)
Minister of Labour Order, 1959. (S.I. 1959 No. 1769.)

24th Carriage by Air (Non-International Carriage) (United Kingdom) (Amendment) Order, 1959. (S.I. 1959 No. 1770.)
Foreign Compensation (Egypt) (Determination and Registration of Claims) (Amendment) Order, 1959. (S.I. 1959 No. 1773.)
Foreign Marriage (Amendment) Order, 1959. (S.I. 1959 No. 1774.)

29th Legitimacy Act, 1959.
Metropolitan Magistrates' Courts (Domestic Proceedings) Order, 1959. (S.I. 1959 No. 1775.)

November

1st Building Society (Amendment) Rules, 1959. (S.I. 1959 No. 1597.)

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

Court of Appeal

HUSBAND AND WIFE: DIVORCE: CUSTODY: REMARRIAGE OF PARTIES: APPLICATION FOR CUSTODY IN DIVORCE SUIT AFTER REMARRIAGE

Grainger *v.* Grainger and Clark

Lord Evershed, M.R., and Romer, L.J. 7th July, 1959

Appeal from Sachs, J. ((1959), 103 Sol. J. 637).

In March, 1958, a husband was granted a decree *nisi* of divorce, made absolute on 26th June, 1958, on the ground of his wife's adultery with the co-respondent. On 25th July, 1958, Davies, J., adjourned an application for a welfare officer's report, and ordered that the wife should have access to the child, who was to remain until further order with a third party. On 4th February, 1959, the husband and wife remarried and, on 16th February, 1959, Davies, J., made an order for joint custody by consent. By 7th March, 1959, the wife had returned to the co-respondent and cross-applications were made for custody by the husband and wife on summons. The assistance of the Queen's Proctor in argument was invoked. On 12th June, 1959, Sachs, J., dismissed the summons, saying that in his view the court had no longer any jurisdiction to make orders in the old divorce proceedings regulating the day-to-day affairs of the parties and their children after the remarriage, but that even if there had been jurisdiction in the previous proceedings, he, his lordship, would have remitted the parties to the normal procedure for a married couple between whom no matrimonial cause was pending. It was recited in the order that the order of 16th February, 1959, was no longer operative. The husband appealed.

LORD EVERSHED, M.R., dismissing the appeal, said that there was no good ground for interfering with the exercise of the judge's discretion, exercised adversely to the use of any jurisdiction which might have resided in him. His lordship, without deciding the point, indicated that he doubted whether there was jurisdiction.

ROMER, L.J., agreed.

APPEARANCES: *Starforth Hill* (*Batchelor, Fry, Coulson & Burder*, for *Foster, Wells and Coggins*, Aldershot); *J. B. S. Edwards* (*Dutton, Makin & Williams*, Winchester).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[3 W.L.R. 642**

Queen's Bench Division

EXTRADITION: APPLICATION FOR DISCHARGE: "SUFFICIENT CAUSE IS SHOWN TO THE CONTRARY"

***In re* Shuter**

Lord Parker, C.J., Ashworth and Hinchcliffe, JJ.

6th October, 1959

Application under s. 7 of the Fugitive Offenders Act, 1881.

On 15th July, 1959, the applicant was committed to Brixton Prison to await his return to Kenya under a warrant issued by the Kenya Government in respect of alleged offences said to have been committed in Kenya. On 17th August, over a month after the committal order was made, he had not been conveyed out of the United Kingdom due to difficulties in finding an escort. He applied for an order that he be discharged pursuant to s. 7 of the Fugitive Offenders Act, 1881, on the basis that there was not shown to be any "sufficient cause . . . to the contrary."

LORD PARKER, C.J., said that the first matter which arose was as to the true construction of s. 7. Counsel for the applicant maintained that it was a section which did not permit the detention of a fugitive for more than one month unless sufficient cause was shown to the contrary. He (his lordship) had come to the conclusion that that was the most natural interpretation of this section. In ordinary language it was saying that there was no jurisdiction for holding a man beyond one month unless sufficient cause was shown. The question then remained whether the facts and circumstances of the case amounted to a "sufficient cause to the contrary." Within those words could be brought matters of reasonableness, and on the facts disclosed no one could say that the person making the arrangements had not been acting reasonably. This was only a matter of a day or two's delay, and the alleged offences were serious offences. He would refuse the application.

ASHWORTH and HINCHCLIFFE, JJ., agreed. Application refused.

APPEARANCES: *Neil Butter* (*Hopwood, Mote & Leedham-Green*); *John C. Mathew* (*Charles Russell & Co.*); *Michael Worsley* (*Director of Public Prosecutions*).

[Reported by Miss EIRA CARYL-THOMAS, Barrister-at-Law]

LEGAL AID: TAXATION OF COSTS: SOLICITOR AND CLIENT: JUDGE'S JURISDICTION TO REVIEW

Sutton *v.* Sears

McNair, J. 9th October, 1959

Summons for review of taxation, adjourned into open court.

On 16th September, 1953, a civil aid certificate was issued in favour of the plaintiff, to enable him to take proceedings in the Queen's Bench Division against the defendant for damages for fraudulent misrepresentation. The plaintiff's contribution was assessed as nil. The action was tried before Havers, J., between 4th April and 4th June, 1957, the hearing occupying sixteen days, and resulted in judgment for the defendant. The judge directed that the plaintiff's costs should be taxed as between solicitor and client, in accordance with the provisions of the Legal Aid and Advice Act, 1949. In the course of taxation substantial reductions were made by the taxing master in the bill of costs delivered by the plaintiff's solicitor, who lodged objections to the taxation which were disallowed by the master. The master then issued his *allocatur*. On 13th August, 1958, a summons was taken out by the plaintiff's solicitor calling upon all the parties concerned to attend upon the judge in chambers on the hearing of an application by the solicitor for an order that the taxation be reviewed. This summons was not in fact served on any person, and was adjourned by McNair, J., for service upon The Law Society. The Law Society were represented at the adjourned hearing by counsel, who joined with counsel for the plaintiff's solicitor in submitting that his lordship had jurisdiction to undertake the review.

MCNAIR, J., reading his judgment, said that he would confine himself to the question of whether he had jurisdiction to entertain the review. Neither the Act nor the regulations made thereunder made any express reference to the review of taxation. His lordship was prepared to hold that the relevant regulations in R.S.C., Ord. 65, r. 27, applied to taxation in a legally-aided case, including reg. 41, which provided for a review by the judge. Further, though with less certainty, his lordship arrived at the same conclusion by another route, namely, that the right to call for a review was a right arising out of the relationship of solicitor and client, which relationship was expressed by the Act not to be affected, save as therein provided, by the grant of legal aid. There was also much to be said for the view that the court had inherent jurisdiction to see that a solicitor, as an officer of the court, was properly remunerated. There were many legal aid cases in which a review had been undertaken, and in some of them doubt or hesitation had been expressed. In *Rolph* v. *Marston Valley Brick Co., Ltd.* [1956] 2 Q.B. 18 Devlin, J., expressed the view, and in *Hammond* v. *Hammond* [1957] P. 349 Karminski, J., decided, that there was no jurisdiction to entertain a review in cases where the summons was brought in the name of an assisted person and not, as here, in the name of the solicitor. His lordship would not be deterred from undertaking a review by that consideration, and in the present case he concluded that he had jurisdiction to entertain the application.

APPEARANCES: *J. H. Hames* (*Merton Naydler*); *Colin Duncan* (*The Law Society*).

[Reported by GROVE HULL, Esq., Barrister-at-Law]

ROAD TRAFFIC: NOTICE OF INTENDED PROSECUTION: ACTUAL RECEIPT BY PROPOSED DEFENDANT WITHIN STATUTORY PERIOD NOT REQUIRED

Layton *v.* Shires

Lord Parker, C.J., Ashworth and Hinchcliffe, JJ.
23rd October, 1959

Case stated by Surrey justices.

The defendant was charged with, on 31st August, 1958, driving a motor car on a road without due care and attention, alternatively, without reasonable consideration for other persons using the road, contrary to s. 12 of the Road Traffic Act, 1930. No sufficient warning that a prosecution would be considered was given at the time when the alleged offences were committed, and the summonses were not served until after the statutory period of fourteen days had expired. The defendant was not only the driver but also the registered owner of the motor car. On 11th September, 1958, the prosecutor posted a notice of intended prosecution under s. 21 (*c*) of the Act by registered post to the defendant's home address. On the same day the defendant, in accordance with arrangements made prior to 31st August, went abroad for a holiday. The letter was received and signed for by a member of his family or a nanny employed by him. He first became aware of the notice when he opened the registered letter on his return from abroad on 1st October, 1958, after the fourteen days had expired. The justices, trying the question as a preliminary issue, were of opinion that the requirements of s. 21 of the Act had not been complied with, and the prosecutor appealed.

ASHWORTH, J., reading the judgment of the court, said that, ever since the decision in *Beer* v. *Davies* [1958] 2 Q.B. 187, the requirement of s. 21 (*c*) was not complied with if the registered letter was not taken in at the address to which it was sent and was returned. In this case, however, the letter was in fact taken in and signed for and was not returned. It was true that it did not reach the hands of the defendant until after the statutory period of fourteen days had expired, but the authorities did not compel the court to hold that in such circumstances the section was not complied with. If a notice under s. 21 (*c*) was sent by registered post to a defendant and delivery of it was accepted either by him or by someone authorised to accept delivery of letters on his behalf, their lordships were of the opinion that the section was complied with, even if the letter did not reach his hands within the statutory period. It was to be noted that s. 21 (*c*) provided that a notice might be sent to the proposed defendant or alternatively to the owner of the vehicle; if the latter alternative was adopted, there was no certainty that the proposed defendant would himself become aware of the intended prosecution within the statutory period, and the existence of the alternative method confirmed their lordships' opinion that actual receipt within the period of a notice addressed to a proposed defendant was not required. The case must go back to the justices with an intimation that the requirement of the section had been complied with. Appeal allowed.

APPEARANCES: *A. C. Lewisohn* (*Wontner & Sons*); *Raymond Stock* (*J. B. Izod*).

[Reported by Miss J. F. LAMB, Barrister-at-Law

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: MAINTENANCE: HUSBAND CONVICTED OF INFLICTING GRIEVOUS BODILY HARM ON WIFE

Cassidy *v.* Cassidy

Lord Merriman, P., and Phillimore, J. 22nd June, 1959

Appeal from Newcastle-upon-Tyne justices.

A husband pleaded guilty before justices to a charge of inflicting grievous bodily harm upon his wife, and was conditionally discharged. The wife subsequently complained to justices for an order under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, on the ground that the husband had been convicted of an aggravated assault upon her. The justices dismissed the wife's complaint on the grounds, first, that the offence of which the husband had been convicted was not an aggravated assault, because he had merely been conditionally discharged, and, secondly, that the conviction could not be relied upon as a basis of the wife's complaint, since under s. 12 (1) of the Criminal Justice Act, 1948, where, following a conviction, the offender is conditionally discharged, the conviction shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order for conditional discharge is made. The wife appealed.

LORD MERRIMAN, P., said that the two grounds upon which the justices had dismissed the wife's complaint were quite distinct. They were wrong about the first of those grounds and right about the second. As to the first ground, he would say without any hesitation that the offence of inflicting grievous bodily harm contained, as the lesser offence, an aggravated assault. Section 4 of the Act of 1895 applied because of the conviction for an aggravated assault, even though the penalty actually imposed was such as could have been imposed for a common assault. If that were the only ground of appeal, he would have felt no hesitation in saying that that was not a ground for dismissing the wife's complaint. They were, however, confronted by s. 12 (1) of the Criminal Justice Act, 1948, which absolved an offender who was conditionally discharged from legal consequences which would otherwise flow from a conviction. The making of a complaint under s. 4 of the Act of 1895 was in terms such a legal consequence. It followed that the magistrates were right in refusing the wife's application for an order on this latter ground, and her appeal must be dismissed.

PHILLIMORE, J, agreed.

APPEARANCES: *J. R. Johnson* (*Gibson & Weldon*, for *L. Mulcahy*, Gateshead); *D. A. Orde* (*Robinson & Bradley*, for *Smirk, Thompson & Craigs*, Newcastle-upon-Tyne).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

Court of Criminal Appeal

CRIMINAL LAW: FITNESS TO PLEAD: BURDEN OF PROOF

R. *v.* Podola

Lord Parker, C.J., Hilbery, Donovan, Ashworth and Paull, JJ.
20th October, 1959

Reference by the Home Secretary.

The appellant was charged with the capital murder of a police officer. Before arraignment the preliminary issue as to whether he was fit to plead to the indictment was raised, it being alleged on his behalf that he was suffering from hysterical amnesia and had lost his memory for all events before the day after his arrest. The Crown contested that allegation, and Edmund Davies, J., ruled that it was for the defence to establish that the appellant was insane so as to be unfit to plead to the indictment, and that it was sufficient to discharge the burden if the defence could show on the balance of probabilities that he was unfit to stand his trial. The preliminary issue was taken in two stages: first, the jury were required to answer the specific question: "Is the defendant now suffering from a genuine loss of memory concerning all events" between a certain period? The jury answered that he was not. In the second stage, the judge directed the jury, that, in view of that answer, it was their duty to say that the appellant was fit to stand his trial. The trial on the charge of capital murder then began, and the appellant was convicted and sentenced to death. He did not appeal, but the Home Secretary, being of the opinion that the question whether the onus of proof on the issue of fitness to plead rested on the prosecution or the defence ought to be considered by the court, referred the case to the court for determination under s. 19 (*a*) of the Criminal Appeal Act, 1907. As to the preliminary issue, the appellant had relied only on hysterical amnesia preventing him from remembering events during the material period; there was no suggestion that his mind in other respects was not a normal mind, his case being that the defect of memory rendered him unable properly to instruct his advisers so that he could not make a proper defence.

LORD PARKER, C.J., reading the judgment of the full court, said that the Attorney-General had pointed to the difficulty that the jurisdiction of the court on a reference under para. (*a*) of s. 19 was limited to cases in which the person convicted would have had a right under the Act to appeal. But the court had jurisdiction to entertain an appeal against conviction on the ground that the hearing of a preliminary issue was open to objection for error in law. The appellant here could have appealed against

his conviction on the ground of misdirection on the preliminary issue so that he should never have been tried on the main charge at all, and it followed that the court had jurisdiction to hear and determine the case referred. As to the onus of proof, the following were the right principles: (1) In all cases in which a preliminary issue as to the accused's sanity was raised, whether contested or not, the jury should be directed to consider the whole of the evidence and to answer the question: "Are you satisfied upon that evidence that the accused person is insane so that he cannot be tried upon the indictment?"; (2) If the insanity was put forward by the defence and contested by the prosecution there was a burden upon the defence of satisfying the jury, on the balance of probabilities, that insanity was made out; (3) Conversely, if the prosecution alleged, and the defence disputed, insanity, there was a burden upon the prosecution of establishing it. Decisions in conflict with those principles—*Ley's* case (1828), 1 Lew. 239; *R.* v. *Davies* (1853), 3 Car. & Kir. 328, and *R.* v. *Sharp* [1958] 1 All E.R. 62—must be taken to have been wrongly decided, and the statement in Halsbury's Laws of England, 3rd ed., vol. 10, p. 403, that the onus was on the prosecution was incorrect. In the court's judgment the judge's direction in this case was right. As to the legal effect of amnesia, a matter necessarily involved in the specific question referred, his lordship said that the tests as to insanity within s. 2 of the Criminal Lunatics Act, 1800, laid down by Alderson, B., in *R.* v. *Pritchard* (1836), 7 C. & P. 303, had been followed so often that they might be said to be embodied in our law. They were not intended to, and did not, cover a case where the prisoner could plead to the indictment and had the physical and mental capacity to know that he had the right of challenge and to understand the case as it proceeded. This was the first attempt in England to assert that hysterical amnesia rendered a man insane so that he could not be tried, and the court agreed with the opinions stated and conclusions reached in Scotland in the similar case of *H.M. Advocate* v. *Russell* [1946] S.C.J. 37. Lord Cooper, L.J.-C., said: "... loss of memory in a person otherwise normal and sane plays its full part, if sufficiently proved, in increasing the onus on the Crown and in raising doubts to which it may be the duty of the jury to give effect." That did not mean that the onus on the Crown was any greater, but that a judge should point out to a jury that they must take into consideration the fact that the accused person could not remember the events. The word "insane" did not strictly apply to a deaf mute, but inclusion within it of persons who from mental or physical infirmity could not follow what was happening in a case accorded with reason and common sense; it was not in accordance with reason and common sense to extend the word to persons mentally normal at the time of the hearing who were capable of instructing their advisers as to what submission to put forward with regard to the commission of the crime. Even if loss of memory had been a genuine loss of memory that did not of itself render the appellant insane so that he could not be tried on the indictment. Appeal dismissed.

APPEARANCES: *F. H. Lawton*, Q.C., and *R. J. S. Harvey* (*Registrar, Court of Criminal Appeal*); *Maxwell Turner* and *J. H. Buzzard* (*Director of Public Prosecutions*); *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *J. R. Cumming-Bruce* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

WEEKLY LAW REPORTS: REFERENCES

The following page numbers can now be given in respect of cases published in these columns on the dates indicated:—

10th July, 1959:—

R. *v.* Bishop .. .. 1 W.L.R. 931

17th July, 1959:—

Sutherland, deceased, *In re*; Winter *v.* Inland Revenue Commissioners .. 3 W.L.R. 543

7th August, 1959:—

Barnet Group Hospital Management Committee *v.* Eagle Star Insurance Co., Ltd. .. .. 3 W.L.R. 610

Ching Garage, Ltd. *v.* Chingford Corporation .. .. 1 W.L.R. 959

14th August, 1959:—

Central Electricity Generating Board *v.* Jennaway .. .. 1 W.L.R. 937

Lord Citrine (Owners) *v.* *Hebridean Coast* (Owners). The *Hebridean Coast* .. .. 3 W.L.R. 569

Mitchell and Edon (Inspectors of Taxes) *v.* Ross .. .. 3 W.L.R. 550

Mount (D.F.), Ltd. *v.* Jay & Jay (Provisions) Co., Ltd. .. .. 3 W.L.R. 537

R. *v.* Governor of Brixton Prison; *ex parte* Shuter .. .. .. 3 W.L.R. 603

21st August, 1959:—

A.-G. *v.* St. Ives Rural District Council 3 W.L.R. 575

25th September, 1959:—

Inland Revenue Commissioners *v.* Hudspeth .. .. 1 W.L.R. 948

16th October, 1959:—

Baker *v.* T. E. Hopkins & Son, Ltd. .. 1 W.L.R. 966

Hancock *v.* Prison Commissioners .. 3 W.L.R. 583

REVIEWS

Income Tax Chart-Manual 1959-60. Forty-fourth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. 1959. pp. viii and (with Index) 127. London: Chas. H. Tolley & Co. 17s. net.

This edition incorporates all the provisions of the Finance Act, 1959, and all High Court decisions, changes in practice, concessions, etc., up to July, 1959. The important new legislation affecting post-war credits, investment allowances, "bond washing," etc., is fully covered, as also is the latest step tightening up the anti-dividend stripping provisions, etc. The whole work is indexed and cross-referenced so as to give immediate reference on any subject to the latest law and practice in a condensed but wholly comprehensive form. We are confident that this edition will be found in every way as helpful as its popular predecessors.

Synopsis of Profits Tax. Twenty-third Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. 1959. pp. 25. London: Chas. H. Tolley & Co. 6s. net.

The increase in the allowances for directors' remuneration in the case of director-controlled companies is dealt with in this edition and, at the same time, the whole of the past legislation is explained in detail, with examples, together with numerous High Court decisions and existing concessions and practice.

Synopsis of Estate Duty. Tenth Edition. Compiled by a Barrister-at-Law and edited by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. 1959. pp. 45. London: Chas. H. Tolley & Co. 6s. net.

The provisions of this year's Act affecting life insurance policies "kept up" by a donor, and exclusion of donor from interest or benefit in a gift, are dealt with, and all concessions, changes in practice and High Court decisions up to July, 1959, are included. The work constitutes a completely up-to-date reference booklet on estate duty and cites many authorities.

Synopsis of Taxation in the Republic of Ireland (Eire), 1959-60. Thirty-fifth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. 1959. pp. 14. London: Chas. H. Tolley & Co. 2s. 6d. net.

This is a complete summary of Irish taxation law and practice including comparative tables of rates, allowances and reliefs,

and with particular reference (with examples) to double taxation relief between the United Kingdom and the Republic as affecting both double residents and persons residing in one only of the two countries, but having income arising in the other. The differences between United Kingdom and Irish law are emphasised and the latest legislative and other changes, up to July, 1959, are covered.

Income Taxes in the Channel Islands and the Isle of Man. Tenth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. 1959. pp. 22. London: Chas. H. Tolley & Co. 6s. net.

For each of the islands of Jersey, Guernsey (including Alderney and Herm) and Isle of Man, a full statement is given of the law and administration, rates of tax, allowances and reliefs, computation of assessable income from every source, etc. The information is up to date with the changes brought about by the 1959 Budgets in each case.

Income Tax Tables for 1959-60 at 7s. 9d. Rate and Reduced Rate Relief, etc. 1959. London: Chas. H. Tolley & Co. 4s. 6d. net.

The publishers claim that these tables are unique in giving, in one total, the required amount for every penny from 1d. to £1 and for every pound from £1 to £1,000, thus obviating the nuisance of having to add together separate totals. There are six different tables covering tax at 7s. 9d. on any given sum, the grossed amount of any net sum, the full range £1 to £360 of reduced rate relief, and the gross amount of dividends subjected to foreign withholding tax. Clearly printed, these tables will be found most useful in practice.

NOTES AND NEWS

AFTER-CARE OF PRISONERS: REPORT

In its annual report published on 20th October by the Home Office (H.M.S.O., 2s.), the Council of the Central After-Care Association stresses the importance of employment in the rehabilitation of the offender. The chairman of the Council, Sir Lionel Fox, C.B., M.C., emphasises the important role which the public can play in the rehabilitation of the offender, and points out that there is scope for additional voluntary social work in co-operation with the staff of the association and the probation service. In the report of the men's division (pp. 4 to 12) several " case histories " are dealt with and tables illustrating the incidence of reconviction have been compiled. The report concludes with a special appeal outlining what the various outside organisations and members of the public can do to help rehabilitate offenders and reduce the temptation to revert to crime.

BRITISH BROADCASTING CORPORATION

Interesting statistics on sound and television broadcasting are to be found in the Annual Report and Accounts of the B.B.C., 1958–59 (Cmnd. 834). The most popular television programmes have an audience of eight million increased to eleven million for certain boxing programmes. Popularity of legal broadcasts is not discussed in the report, but our enquiries have elicited that there was an average audience of 4½m. for " The Case Before You " televised during July and August and one of 5¾m. for " You Take Over—The Stipendiary Magistrate " televised last January. Despite competition with " Ray's a Laugh " and " Any Questions " on the Light Programme, the sound series " The Verdict of the Court " on the Home Service, which commenced last month, attracts 1¼m. listeners. The next broadcast in that series will be on Friday, 30th October, at 7 p.m., when the 1903 trial of the *Veronica* mutineers will be reconstructed.

Personal Notes

Mr. ERNEST EDWARD BROWN, solicitor, of Wednesbury, and clerk to the Tipton Magistrates for more than twenty-seven years, and to the Wednesbury Magistrates for twenty-three years, has announced that he will retire from both these positions next June.

Mr. TREVOR COX, solicitor, of Stoke-on-Trent, was married to Miss Jean Margaret Pointon recently.

Societies

At a meeting of the newly formed CENTRAL MIDDLESEX LAW SOCIETY held at the Star and Garter Hotel, Kew Bridge, on 2nd October, perhaps the most important and novel subject discussed, emanating from the Scarborough Conference of The Law Society, was the question whether the profession should advertise its services.

The SOLICITORS' ARTICLED CLERKS' SOCIETY are holding a debate with an outside society on 3rd November on a subject of topical interest. Refreshments will be available at The Law Society from 6 p.m.

Obituary

Mr. ERIC SAVERY, solicitor, of Kidderminster, died on 17th October, aged 45. He was admitted in 1941.

Mr. JOHN THOMPSON, retired solicitor, of London, W.C.2, died on 17th October, aged 98. He was admitted in 1883. When he retired two years ago, he was the oldest practising solicitor in Britain.

Mr. ARCHIBALD CLAUD KINGSWELL, solicitor, of Gosport, died on 21st October, aged 51. He was admitted in 1931.

PRINCIPAL ARTICLES APPEARING IN VOL. 103

2nd to 30th October, 1959

Lists of articles published earlier this year appear in the Interim Index (to 26th June) and at p. 758, *ante* (3rd July to 25th September)

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